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Nominal Consideration

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NOMINAL CONSIDERATION.

It is said that the law concerning the doctrine of consideration[1] is far from being clear, and that the courts are not consistent in their application of the rule. This is certainly true of that phase of the doctrine dealing with the adequacy or sufficiency of the consideration. It is with this phase that the present article has to do.

Blackstone says of a contract: "It is an agreement, upon a *sufficient consideration.* The civilians hold, that in all contracts, either expressed or implied, there must be something given in exchange, something that is mutual or reciprocal. This thing, which is the price or motive of the contract, we call the consideration; and it must be a thing lawful in itself, or else the contract is void. . . . But a contract for any *valuable consideration,* as for marriage, for money, for work done, or for other reciprocal contracts, can never be impeached at law; and, if it be of a sufficient adequate value, is never set aside in equity; for the person contracted with has then given an equivalent in recompense, and is therefore as much an owner or creditor, as and other person."[2] Concerning the consideration, he says; "A consideration of some sort or other is so absolutely necessary to the forming of a contract, that a *nudum pactum,* or agreement to do or pay anything on one side, without any compensation on the other, is totally void at law; and a man cannot be compelled to perform it."[3]

From Chitty we learn that, "Even in equity, although a consideration be necessary, in the case of an agreement not under seal, *inadequacy* of consideration or value is in general, of itself, no ground for impeaching a contract. . . . And inequality of consideration upon entering into an agreement for the compromise or abandonment of a doubtful right, will not defeat the contract. But if the folly of the contract be extremely gross, this circumstance will tend, if there be other facts in corroboration, to establish a case for relief on the ground of fraud; but

[1] History of Consideration, Harvard Law Review, volume 2, pp. 1-19, 60-61 and volume 8, pp. 252-264. Two Theories of Consideration, *ibid,* volume 12, p. 55, and volume 13, p. 29. Notes on Consideration, *ibid,* volume 26, p. 429.

[2] II Blackstone, p. 444.

[3] II Blackstone, p. 445.

mere folly and weakness, or want of judgment, will not defeat a contract even in equity."[4]

In Parsons we find that, "If the consideration is valuable it need not be *adequate;* that is, the court will not inquire into the exact proportion between the value of the consideration and that of the thing to be done for it. . . . The courts, both of law and equity, refuse to disturb contracts on questions of mere adequacy, whether the consideration is of benefit to the promisor, or of injury to the promisee."[5] Speaking of specific performance of contracts for the purchase of real estate, he says, "But a mere inadequacy of price—not gross, and not attended by circumstances indicating fraud or oppression—is not sufficient to avoid it."[6]

Concerning specific performance, the statement is made in Adams[7] that, "Where a decree for specific performance is asked, there must be a valuable consideration to support the equity. A distinction, however, must be noted between value and adequacy. It is essential that the consideration be valuable, but it is not essential that it be also adequate. The parties themselves are the best judges of that; and therefore mere inadequacy, if not so gross as to prove fraud or imposition, will not warrant the refusal of relief."[8]

Addison, in speaking of inadequacy of consideration, says,[9] "The consideration for a simple contract or promise need not be adequate in point of value. 'If there be any consideration, the court will not weigh the extent of it.' It has no means of scrutinizing the varied hidden motives and reasons that may have influenced the parties, and induced them to enter into the contract, nor can it determine upon the prudence or propriety of the transaction. If parties choose to enter into unwise or improvident bargains they must abide by the consequences of their

[4] Chitty, The Law of Contracts, 5th American edition, p. 31.
[5] Parsons, Law of Contracts, 5th edition, volume 1, p. 436.
[6] Parsons, Law of Contracts, 5th edition, volume 1, p. 492.
[7] Adams, Doctrine of Equity, pp. 78-79.
[8] 12 How. (U. S.) 197, where at an execution sale, $600.00 was paid for certain promissory notes secured by mortgage, amounting to $260,000, it was held, that mere inadequacy of price does not, of itself, furnish a sufficient reason for dismsising the bill.
[9] Addison, Law of Contracts, Morgan's edition, volume 1, p. 31.

own rashness and folly; they have contracted for themselves, and the court cannot contract for them."

In *Mouton* v. *Noble,*[10] it is said: "The requiring of a small pecuniary consideration to support an agreement is a mere fiction, unknown to the civil law and to the laws of this state." That was a Louisiana case where the civil law is followed.

The general rule followed by the law courts is as stated in 13 C. J., under Contract, section 237, "So long as it is something of real value in the eye of the law, whether or not the consideration is adequate to the promise is generally immaterial in the absence of fraud. The slightest consideration is sufficient to support the most onerous obligation." This seems to be supported by the cases.

"The courts do not ordinarily go into the question of equality or inequality of consideration, but act upon the presumption that parties capable to contract are capable of regulating the terms of their contracts, granting relief only when the inequality is shown to have arisen from mistake, misrepresentation or fraud. . . . The law looks no further than to see that the obligation rests upon a consideration; that is, one recognized as legal, and of some value. It is sufficient if it is of only slight value or such as can be of value to the promissor."[11]

"Aside from contracts peculiar to the law merchant or the like, a contract for the exchange of unequal sums of money at the same time, or at different times, when the element of time is no equivalent, is not binding at common law; and in such cases, courts may and do inquire into the equality of the contract."[12] Such was the situation in the case of *Schnell* v. *Nell,*[13] where it was held that the consideration of one cent would not support a promise to pay $600.00; also in the case of *Shepard* v. *Rhodes,*[14] which held, "Courts do not go into questions of equality or inequality of considerations, but a contract for the exchange of unequal sums of money, when there is no other element in the transaction that affects the inequality, is not binding; hence a

[10] 1 La. Ann. 192.
[11] 6 R. C. L. 678.
[12] 6 R. C. L. 681.
[13] 17 Ind. 29, 79 Am. Dec. 453.
[14] 7 R. I. 470.

contract to pay $1,000.00 in consideration of $1.00 is not good, for want of a sufficient consideration."

In the case of *Lindlay v. Raydure,*[15] the court held that "a consideration of $1.00 is sufficient to support an oil and gas lease by the terms of which the lessee's interest is subject to defeasance for breach of condition subsequent to drill wells and pay royalties, though he is not bound by any covenant to perform the condition." In *Guffey* v. *Smith,*[16] it was said that "the consideration of the lease, viz., $1.00 paid to the lessor and the covenants and agreements of the lessee, cannot be pronounced recited consideration of one dollar is ordinarily sufficient to sup- unreasonable." Again, in *Rohwer* v. *Burrell,*[17] it is said that "a recited consideration of one dollar is ordinarily sufficient to support a contract or agreement." *Rich v. Doneghey,*[18] was a case of an oil and gas lease which recited a consideration of one dollar, and it was there held that one dollar is a sufficient consideration to support a conveyance of land or other agreement. *Tonera* v. *Henderson,*[19] held that "the recital in a deed of 'the further consideration of five shillings' was in itself sufficient to support the deed."

Equity will generally follow the common law rule, inquiring into the equality or inequality of the consideration only when it would raise a presumption of fraud or when it is so apparently unjust as to shock the conscience. "If the rule as to adequacy of consideration is to be adhered to, it would seem that when the thing promised is of an indeterminate value, even a nominal consideration, such as one dollar, would sustain the promise. However, the rule is generally stated to be that where the consideration is so grossly inadequate as to shock the conscience, courts will interfere. But an examination of the cases shows that this has scarcely ever been done, unless the inadequacy was coupled with circumstances of fraud or oppression, or of advantage taken of some relation of trust or dependence. The inadequacy of itself may be so flagrant as to raise a presumption of fraud."[20]

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[15] 239 Fed. 928.
[16] 237 U. S. (Ill.) 101, 116.
[17] 42 Utah 510, 134 Pac. 573.
[18] 177 Pac. (Okla.) 86.
[19] 3 Litt. 234.
[20] 6 R. C. L. 679.

Such is the case in *Federal Oil Co.* v. *Western Oil Co.*,[21] where it was said that, "A lease, for the nominal consideration of $1.00, for the purpose of drilling and operating for oil and gas, the lessor to receive a certain proportion of the oil and gas obtained, which does not obligate the lessee to commence or prosecute such operations, and which he may terminate at his pleasure without compensation to the lessor, is unconscionable and should not be enforced."

Though the books are full of dicta and many generalizations, there are in reality few cases dealing squarely with the subject of nominal consideration, especially with the sufficiency of the recital of one dollar consideration in deeds and conveyances. Usually there are other elements entering into the case, such as, mistake or fraud, or, other supporting promises and covenants. Ordinarily, the general attitude of the courts, refusing to interfere with the contracts and dealings of men who are presumed to know and understand what they are doing better than the courts and who may have their own hidden motives for so dealing with one another, seems to be the fairest and the most reasonable view.

[21] 112 Fed. 373.